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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 14 2005

LIN 03 049 51075

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Marie Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Biochemistry from Indiana University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens

> seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, biomedical science, specifically immunology and hematology. We also concur that the proposed benefits of her work, identification of new targets for drug treatments, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

While a Ph.D. candidate at Indiana University, the petitioner focused on cloning and characterizing chemokines, small proteins that regulate all leukocyte chemotaxis. Specifically, the petitioner cloned and characterized two chemokines, BRAK (CXCR4) and ALP (CCL27). Dr. [redacted] Deputy Director of the Indiana University Cancer Center, explains that chemokines play "a role in atherosclerosis, leukocyte infiltration after myocardial infarctions or thrombotic stroke, or in cardiac transplantation, especially rejection." Dr[redacted] the petitioner's Ph.D. advisor, asserts:

> [The petitioner] elucidated the mechanism of action of these chemokines in how leukocytes are first developed in the bone marrow. She has made seminal observations in how these chemokines direct leukocytes to be formed, and then how they direct their migration to areas of the body where they are needed to fight infection.

Dr. [redacted] concludes that this work was novel and of great significance to the treatment of auto-immune diseases. Dr. [redacted] does not explain how this achievement constitutes more than applying existing cloning technology to chemokines that had yet to be cloned.

Dr. [redacted] Scientific Director of the Walther Oncology Center at Indiana University, asserts that he coauthored two articles with the petitioner, who made important contributions to results reported in those articles. Dr. [redacted] explains that because of the petitioner's "expertise in cell and molecular biology that two novel proteins in the chemokine family of cytokines were able to be structurally and functionally defined and correctly categorized." It cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Id.* at 221. Moreover, innovation in and of itself is not always sufficient to meet the national interest threshold, but must be evaluated on a case-by-case basis. *Id.* at 221, n. 7.

Dr. [redacted] another member of the petitioner's thesis committee at Indiana University, asserts that the petitioner's work on CCR7 "significantly improves our understanding of immune system regulation." While Dr. [redacted] initially asserted that the petitioner's had published articles in *Blood,* in response to the director's request for copies of any articles published in that journal, Dr. [redacted] asserted that *Blood* publishes the proceedings from the annual meetings of the American Society of Hematology, and, thus, included the petitioner's poster abstracts from two such meetings.

In response to the director's request for additional documentation, the petitioner submitted more independent letters. Dr. [redacted] an associate professor at the University of California, San Francisco, asserts that other researchers have confirmed the petitioner's predictions about BRAK's tumor suppressing nature based on its rare expression in tumor cells. Dr. [redacted] concludes that the petitioner "made a landmark discovery in chemokine field by suggesting a new role of chemokines in the event of tumorigenesis."

Dr. [redacted] a highly cited researcher in the field, asserts that the petitioner "first reported a new chemokine ALP (also termed CTACK, ESKINE and CCL27) that we subsequently found to be of critical importance in skin inflammatory responses." Dr. [redacted] concludes that "very few others in this field could have completed what [the petitioner] accomplished in her breakthrough research results." Dr. [redacted] Deputy Chairman of the Department of Head and Neck Surgery at the University of Texas, asserts that the petitioner's "original contribution in identifying and characterizing BRAK, a very important CXC chemokine involved in tumor biology, significantly impacted this field by shedding light on chemokine's function in immunology." Both Dr. [redacted] and Dr. [redacted] have cited the petitioner's work in their own articles. As will be discussed below, however, the citations reveal that the petitioner's cited work was not especially unique.

Dr. [redacted] a scientist at Abgenix, Inc., states that the petitioner "carefully designed assays to validate the antibodies that were generated by Abgenix, which have potential therapeutic value in graft versus host disease." Dr. [redacted] concludes that the petitioner has made valuable contributions to this program. Dr. [redacted] does not explain when this collaboration occurred. As the letter was submitted in response to the request for additional evidence, it is not clear that the collaboration occurred prior to the date of filing. Similarly, Dr. [redacted] letters discussing the petitioner's future and (in response to the director's request for additional documentation) current work at the Washington University School of

that [redacted] achievements are not reduced because someone else would have invented the light bulb if he had not done so.

The petitioner's analogy is not persuasive. We are not speculating that, had the petitioner not done so, another researcher might someday have cloned and characterized BRAK and ALP. We are noting that other research groups have, in fact, done so. Moreover, it is not clear from the record that the petitioner beat these other researchers to a significant degree. As stated above, the three ALP articles were all published in 1999.

The petitioner further asserts that the director should not have compared her to postdoctoral researchers since she had just graduated at the time of filing. Rather, the director should have considered her work during her Ph.D. study from 1997 through 2002, including the fact that she received a fellowship from the American Heart Association.

The director, however, did not disregard the petitioner's student research. Rather, the director determined that the petitioner had not demonstrated that the work constituted a contribution that had influenced the field. Moreover, the petitioner must establish that she will benefit the national interest to a greater extent that an available U.S. worker with the same minimum qualifications. A student is not minimally qualified to work as a postdoctoral researcher.

The record shows that the petitioner is respected by her colleagues and has made useful contributions in her field of endeavor. While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who obtains a Ph.D. or is working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. The record does not establish that the petitioner's cloning and characterization of BRAK and ALP constitute groundbreaking advances in her field. At best, the petition appears to have been filed prematurely, before the petitioner's other work was published and, thus, could impact the field.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.